

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

ALBERTO CASTILLO
TX-1334674-R

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DOCKETED COMPLAINT NO.
13-031

AGREED FINAL ORDER

On the 16 day of Aug, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Alberto Castillo (the "Respondent").

In order to conclude this matter, Alberto Castillo neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1334674-R, and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised real properties located at 112 Sandstone Drive A & B, Jarrell, Texas (the "duplex property") on or about June 11th, 2012 and 209 Wind Stone, Jarrell, Texas ("the single family property") on or about July 20th, 2011.
3. Thereafter a complaint was filed with the Board by Rex Kothmann, an employee of the National Banks of Central Texas. The complaint alleges that the Respondent produced appraisal reports for the properties that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board notified Respondent of the nature of the accusations involved in the complaint and Respondent was afforded the opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board, which was received.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report(s). With respect to the duplex property these include:

- a) USPAP Record Keeping Rule -- Respondent violated the Record Keeping Rule because he failed to maintain a work file containing all data, information and documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;
- b) USPAP Competency Rule – Respondent was not competent to perform the assignment, nor did he take those steps necessary to become competent;
- c) USPAP Scope of Work Rule; 1-2(h) & 2-2(b)(vii) – Respondent failed to satisfy the Scope of Work Rule and related USPAP provisions because his scope of work did not facilitate the development of credible assignment results. Respondent failed to support his work with the relevant evidence and logic required to obtain credible assignment results;
- d) USPAP Standards 1-2(a) & 2-2(b)(i) – Respondent identify the client and intended users of the appraisal correctly;
- e) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements description adequately and misrepresented the site description;
- f) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or items of a similar nature;
- g) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent misrepresented factors affecting marketability (such as economic supply and demand and market area trends), including the neighborhood's market area trends and the high rate of distressed home sales in the immediate area even though a high rate of the total sales similar to the property were bank owned. Respondent also failed to summarize his rationale for the market area trends and economic supply and demand determinations he made in his report. He also did not provide supporting documentation in his work file for the opinions and conclusions he reached concerning these topics;
- h) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to provide a summary of his supporting rationale for his determination of the property's highest and best use;
- i) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop his site value determination and did not provide a brief summary of supporting reasoning for his determination;
- j) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to provide support for his determination of the cost new of improvements in his work file and did not summarize his supporting rationale for his determinations. Respondent also did not properly collect, verify, analyze and reconcile this data,

which revealed a different price per square foot than Respondent used in his report;

- k) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-6(a) & (b) & 2-2(b)(viii) – Respondent misrepresented that the sales he selected were comparable to the property and misrepresented that comparable sales in the immediate area in Jarrell were unavailable. He has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Generally, Respondent used inappropriate properties as comparable sales even though appropriate, more similar sales (in terms of salient market characteristics) were readily available in the immediate area and should have been used. Respondent misrepresented that the properties he selected as comparables were similar in salient market characteristics. Market data was not analyzed by Respondent, which needed to be and would have significantly impacted his assignment results;
- l) USPAP Standard 1-4(c)(i) & 2-2(b)(viii); 1-1(a) & 1-4(c) – Respondent failed to collect, verify, analyze and reconcile comparable rental data for the property and/or the potential earnings capacity of the property to estimate the gross income potential of the property. Respondent also failed to employ recognized methods and techniques correctly;
- m) USPAP Standard 1-4(c)(iii) & 2-2(b)(viii) ; 1-1(a) & 1-4(c) – Respondent failed to collect, verify, analyze and reconcile comparable data to estimate capitalization and/or discount rates. Respondent also failed to employ recognized methods and techniques correctly;
- n) USPAP Standard 1-4(c)(iv) & 2-2(b)(viii); 1-1(a) & 1-4(c) – Respondent provided no supporting rationale or analysis for his conclusion in the income approach and did not employ recognized methods and techniques in reaching his conclusions; and,
- o) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – For the reasons detailed above, Respondent produced a misleading appraisal report for the property that contained misrepresentations and several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in a misleading appraisal report that was not credible or reliable and significantly impacted his assignment results.

6. With respect to the single family property these violations include:

- a) USPAP Record Keeping Rule – Respondent violated the Record Keeping Rule because he failed to maintain a work file containing all data, information and documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;
- b) USPAP Competency Rule – Respondent was not competent to perform the assignment, nor did he take those steps necessary to become competent;

- c) USPAP Scope of Work Rule; 1-2(h) & 2-2(b)(vii) – Respondent failed to satisfy the Scope of Work Rule and related USPAP provisions because his scope of work did not facilitate the development of credible assignment results. Respondent failed to support his work with the relevant evidence and logic required to obtain credible assignment results;
- d) USPAP Standards 1-2(a) & 2-2(b)(i) – Respondent identify the client and intended users of the appraisal correctly;
- e) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvements description adequately;
- f) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent misrepresented factors affecting marketability such as economic supply and demand and market area trends. Respondent also failed to summarize his rationale for the market area trends and economic supply and demand determinations he made in his report. He also did not provide supporting documentation in his work file for the opinions and conclusions he reached concerning these topics;
- g) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop his site value determination and did not provide a brief summary of supporting reasoning for his determination;
- h) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to provide support for his determination of the cost new of improvements in his work file and did not summarize his supporting rationale for his determinations. Respondent also did not properly collect, verify, analyze and reconcile this data, which revealed a different price per square foot than Respondent used in his report;
- i) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-6(a) & (b) & 2-2(b)(viii) – Respondent misrepresented that the sales he selected were comparable to the property and misrepresented that comparable sales in the immediate area in Jarrell were unavailable. He has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Generally, Respondent used inappropriate properties as comparable sales even though appropriate, more similar sales (in terms of salient market characteristics) were readily available in the immediate area and should have been used. Respondent misrepresented that the properties he selected as comparables were similar in salient market characteristics. Respondent also failed to discuss his analysis and reasoning behind his reconciliation of the adjusted sales prices of the sales he did select as comparables. Market data was not analyzed by Respondent, which needed to be and would have significantly impacted his assignment results;
- j) USPAP Standard 2-2(b)(viii) – Respondent failed to explain and support his exclusion of the income approach;

- k) USPAP Standards 1-5(a) & 2-2(b)(viii) – Respondent failed to analyze the contract of sale for the single family property and his work file only contained the first page of the contract;
 - l) USPAP Standards 1-5(b) & 2-2(b)(viii) – Respondent failed to analyze a prior sale of the single family property which occurred within 3 years prior to the effect date of his appraisal; and,
 - m) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) – For the reasons detailed above, Respondent produced a misleading appraisal report for the single family property that contained misrepresentations and several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in a misleading appraisal report that was not credible or reliable and significantly impacted his assignment results.
7. Respondent omitted material facts and made material misrepresentations in his appraisal of the property as described in more detail above.
8. The parties enter into this consent order ("Order") in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(6).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(12) by making material misrepresentations omitting material facts.
4. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board ORDERS that Respondent's Texas appraiser certification be suspended for a period of 15 months, effective 5:00 p.m. (CST) on August 16th, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m. (CST) November 16th, 2013, the suspension is to be probated for remaining 12 months, ending at 5:00 p.m. (CST) on November 16th, 2014, subject to the following terms and conditions:

1. **EDUCATION.** On or before November 16th, 2013. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved

by the Board. Unless otherwise noted below, all classes must require in-class attendance and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**

A. A minimum fifteen (15) classroom-hour course in USPAP;

2. **ADMINISTRATIVE PENALTY.** Respondent shall pay to the Board an administrative penalty of two thousand five dollars (\$2,500.00), which shall be paid in ten (10) monthly installments of \$250.00 by the dates indicated below:

- a. \$250.00 due on or before September 5th, 2013
- b. \$250.00 due on or before October 5th, 2013
- c. \$250.00 due on or before November 5th, 2013
- d. \$250.00 due on or before December 5th, 2013
- e. \$250.00 due on or before January 5th, 2014
- f. \$250.00 due on or before February 5th, 2014
- g. \$250.00 due on or before March 5th, 2014
- h. \$250.00 due on or before April 5th, 2014
- i. \$250.00 due on or before May 5th, 2014
- j. \$250.00 due on or before June 5th, 2014

3. **EXAMINATION.** On or before February 16th, 2014, Respondent shall submit to a reexamination for his residential certification, receive a passing grade on such reexamination and submit satisfactory evidence of successfully passing the reexamination.

4. Fully and timely comply with all of the provisions of this Agreed Final Order; and,

5. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE SUSPENSION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE COMMENCING ON THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION. ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

RESPONDENT IS SOLELY RESPONSIBLE FOR TIMELY DELIVERY TO THE BOARD OF ALL DOCUMENTS AND PAYMENTS NECESSARY FOR COMPLIANCE OF THIS AGREED FINAL ORDER. PAYMENT OF ANY ADMINISTRATIVE PENALTIES DUE MUST BE IN THE FORM OF A CASHIER'S CHECK OR MONEY ORDER MADE PAYABLE TO THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD. RESPONDENT SHALL RETAIN DOCUMENTATION (REPLY EMAIL, FAX CONFIRMATION, RETURN RECEIPT, ETC.) CONFIRMING RECEIPT BY THE BOARD OF ALL THE NECESSARY DOCUMENTS.

RESPONDENT SHALL SEND ALL DOCUMENTS AND PAYMENTS NECESSARY FOR COMPLIANCE BY: (1) EMAIL TO COMPLIANCE.TALCB@TALCB.TEXAS.GOV, (2) FAX TO (512) 936-3966, ATTN: COMPLIANCE, OR (3) CERTIFIED MAIL RETURN RECEIPT REQUESTED TO STANDARDS & ENFORCEMENT SERVICES, TEXAS APPRAISER LICENSING & CERTIFICATION BOARD, STEPHEN F. AUSTIN BUILDING, 1700 N. CONGRESS AVE., SUITE 400, AUSTIN, TX 78701.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this ____ day of _____, 2013.

Alberto Castillo
ALBERTO CASTILLO T. Whitmer

TED WHITMER, ATTORNEY FOR
RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 29 day of
July, 2013, by ALBERTO CASTILLO, to certify which, witness my hand and
official seal.

Sandy Monterde
Notary Public Signature
Sandy Monterde
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 8 day of
August, 2013.

Troy Beaulieu
Troy Beaulieu
TALCB Staff Attorney

Signed by the Commissioner this 16 day of Aug, 2013.

Douglas E. Oldmixon
Douglas E. Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 16 day of Aug, 2013.

Walker Beard
Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board